

171 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

PJM Interconnection, L.L.C.
The Dayton Power & Light Company

Docket No. ER20-1150-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 1, 2020)

1. On March 3, 2020, Dayton Power & Light Company (Dayton) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff), to change Dayton's current methodology for establishing the Network Integration Transmission Service (NITS) rate charged for the Dayton zone by replacing the stated revenue requirement and rate with a transmission formula rate (Formula Rate) and associated protocols (Protocols) in new Attachments H-15A and H-15B. Dayton proposes to modify the current revenue requirements and NITS rates in Attachment H-15; the rate for Scheduling, System Control and Dispatch Service in Schedule 1A; the rate for Point to Point Transmission Service in Schedules 7 and 8, effective May 3, 2020, and subject to annual revisions beginning January 1, 2021, and each calendar year thereafter (collectively, Proposed Tariff Revisions).² As discussed below, we accept Dayton's Proposed Tariff Revisions and suspend them for a nominal period, to become effective May 3, 2020, as requested, subject to refund, and set them for hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d (2018).

² PJM Interconnection, L.L.C., Intra-PJM Tariffs, [OATT Table of Contents](#), [PJM OATT Table of Contents, 40.0.0](#), [SCHEDULE 1A, OATT SCHEDULE 1A, 11.0.0](#), [SCHEDULE 7, OATT SCHEDULE 7, 9.0.0](#), [SCHEDULE 8, OATT SCHEDULE 8, 9.0.0](#), [OATT ATT H-15, OATT Attachment H-15 - Dayton Power & Light, 5.0.0](#), [OATT ATT H-15A, OATT Attachment H-15A - Dayton Power & Light, 0.0.0](#), [OATT ATT H-15B, OATT Attachment H-15B - Dayton Power & Light, 0.0.0](#).

I. Background

2. Dayton is an Ohio public utility that owns transmission facilities subject to the functional control by PJM and that provides electric distribution services to over 520,000 customers in the Dayton, Ohio area. Dayton is a wholly owned subsidiary of DPL Inc., which in turn is a wholly owned indirect subsidiary of the ultimate parent, The AES Corporation (AES). Dayton owns and operates approximately 1,682 miles of transmission facilities operating at voltages of 345kV, 138kV, or 69kV.³

3. Dayton states that it filed an unbundled open access transmission tariff in 1998 in Docket No. ER98-1292-000 and subsequently reached a settlement for a fixed NITS revenue requirement.⁴ Subsequently, Dayton states that, when it joined PJM in 2004, its revenue requirement was transferred over to Attachment H-15 of the PJM Tariff. Dayton states that, since 2004, the only substantive change in the NITS rate was to incorporate the lower federal tax rate that was enacted by the Tax Cut and Jobs Act of 2017.⁵

4. Dayton states that 60% of its transmission line facilities are greater than 50 years old, and approximately 500 miles of wood pole 69kV lines will be at least 60 years old by 2025. In order to meet North American Electric Reliability Corporation criteria to ensure the reliability of the bulk power system that serves the Dayton area load, Dayton states that it is tasked with evolving its legacy system of 1,682 miles of transmission line miles and 154 substations. Dayton states that it is planning to construct approximately \$170 million in new or upgraded transmission facilities over the next five years, which represents a 40% increase in Dayton's current gross transmission investment.⁶

II. Filing

5. Dayton explains that, with the Proposed Tariff Revisions, Dayton is replacing its stated rate with a forward-looking formula rate based on projected data and associated Protocols, which will result in annual true-up adjustments reflecting actual data, in a manner consistent with Commission precedent. Dayton states that the proposed

³ Dayton March 3, 2020 Transmittal at 3.

⁴ *Id.* at 4 (citing *Dayton Power & Light Co.*, 88 FERC ¶ 61,152 (1999) (delegated order)).

⁵ *Id.*

⁶ *Id.* at 6.

Protocols are developed per guidance provided by the Commission orders.⁷ Dayton explains that its \$170 million planned investment in transmission facilities is a driving factor in proposing a transmission formula rate at this time because transmission formula rates reduce the time lag in the recovery of transmission costs for new projects. Dayton also claims that the Commission has recognized the importance and usefulness of transmission formula rates in connection with the need to invest in transmission facilities.⁸

6. Dayton proposes new depreciation rates for transmission plant of 2.23%, a reduction from the current 2.46% depreciation rate, which corresponds to a reduced annual accrual of \$868,000 based upon transmission plant in service as of June 30, 2019. The depreciation rate is derived from a depreciation study using the straight-line whole life method, with the Average Life Group procedure and takes into account negative net salvage values at the end of the asset life. Dayton also states that the Formula Rate also includes an allocated amount of depreciation for general and intangibles.⁹

7. Dayton proposes a 10.39% base Return on Equity (ROE) and 50 basis point RTO incentive to add to the base ROE because Dayton is a member of PJM and has turned functional control of its transmission assets over to PJM (RTO Participation Adder), which results in a 10.89% overall ROE. Dayton claims that its methodology to develop ROE is consistent with the Commission's use of multiple financial models.¹⁰ Dayton further claims that the Commission recently affirmed that the RTO Participation Adder is justified by a demonstration that the transmission owner has "joined an RTO/ISO and

⁷ *Id.* at 11 (citing *Midwest Independent Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance filing*, 146 FERC ¶ 61,212 (2014) (MISO)).

⁸ *Id.* at 7 (citing *Promoting Transmission Inv. Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 386 (2006)).

⁹ *Id.* at 12-13.

¹⁰ *Id.* at 14 (citing *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118 (2018); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019)).

their membership is ongoing.”¹¹ Dayton states that it is an ongoing member of PJM, therefore a 50-basis point incentive adder is justified.¹²

8. Dayton notes that, pursuant to FPA section 219¹³ and Order No. 679, it submitted an application on February 24, 2020 in Docket No. ER20-1068-000 for the RTO Participation Adder, a request to include 100% Construction Work in Progress (CWIP) in rate base for certain planned transmission projects (CWIP Incentive), and 100% recovery of all prudently incurred costs if these transmission projects are abandoned (Abandoned Plant Incentive).¹⁴ Consistent with its pending request for the CWIP Incentive, Dayton proposes to include in the Formula Rate projected values for CWIP for the relevant transmission projects.

9. Dayton states that the proposed Formula Rate includes placeholders but no positive values for an additional ROE incentive (in addition to the RTO Participation Adder) for qualified projects. Dayton states it has not requested any such additional ROE incentive either in this FPA section 205 filing or its pending incentives application in Docket No. ER20-1068-000. Dayton states that placeholders in the Formula Rate are to accommodate potential future use.¹⁵

10. Dayton notes that, consistent with Commission precedent, Dayton’s Protocols include in its annual informational filing: (1) a detailed description of the methodologies used to allocate and directly assign costs between Dayton and its affiliates by service category or function, including any changes to such cost allocation methodologies from the prior calendar year and the reasons and justifications for those changes; and (2) the magnitude of such costs that have been allocated or directly assigned between Dayton and each affiliate by service category or function.

11. Dayton notes that, because it is a part of a registered holding company group with a centralized service company, consistent with Commission precedent, it has in place in its Protocols a Cost Alignment and Allocation Manual (CAAM) that details the cost allocation methodologies that are used by Dayton’s ultimate parent company AES.

¹¹ *Id.* at 14 (citing *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038, at PP 51-52 (2019)).

¹² *Id.*

¹³ 16 U.S.C. § 824s (2018).

¹⁴ Dayton states that it has supported the RTO Participation Adder in both this instant FPA section 205 filing and the pending incentives application. Dayton March 3, 2020 Transmittal at 9 & n.7.

¹⁵ *Id.* at 9.

Dayton notes that, though the Commission has not explicitly approved the AES CAAM allocation methodology, the Commission's accounting staff reviewed and suggested revisions to the AES CAAM as applied to a Dayton affiliate, Indianapolis Power & Light Company.¹⁶

12. Dayton proposes its NITS rate to be \$1,204.75/MW-month. Compared to the current NITS rate in the Attachment H-15 of \$1,046.79/MW-month, Dayton explains that the proposed NITS rate is a 15.1% increase, which has a projected annual revenue effect of an increase of approximately \$6.2 million (or \$4.1 million for the May through December 2020 period) using PJM's 2020 Network Service Peak Load for the Dayton Zone of 3,258.6 MW. Dayton states that this rate will be subject to an annual true-up to actual costs and revenues. Dayton explains that the current and proposed Attachment H-15 also include Wholesale Distribution Charges but no changes are proposed to those Wholesale Distribution Charges.¹⁷

13. Dayton proposes a change in the Schedule 1A for the Scheduling, System Control and Dispatch Service Rate from the current level of \$0.0797/MWh to \$0.0706/MWh. Dayton states that this new rate results in a minor decrease in projected revenue of about \$137,000. Additionally, Dayton states that the Proposed Tariff Revisions delete an obsolete footnote in Schedule 1A relating to a Dayton settlement that terminated in 2014.¹⁸

14. Dayton requests that the Proposed Tariff Revisions become effective on May 3, 2020. Dayton also requests that the Commission not to impose more than a nominal suspension because the Formula Rate should not result in substantially excessive rates under *West Texas Utilities*.¹⁹

III. Notice of Filing and Responsive Pleadings

15. Notice of Dayton's filing was published in the *Federal Register*, 85 Fed. Reg. 13,887 (March 10, 2020), with interventions and protests due on or before March 24, 2020. The Public Utilities Commission of Ohio's Office of the Federal Energy Advocate (Ohio Commission) filed a notice of intervention. Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel), Industrial Energy Users-Ohio,

¹⁶ *Id.* at 14-15 (citing *AES Corp.*, 160 FERC ¶ 61,075, at P 9 (2017)).

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 16 (citing *West Tex. Utils. Co.*, 17 FERC ¶ 61,236 (1981), *order on reh'g*, 18 FERC ¶ 61,189, at 61,374 (1982)).

Buckeye Power, Inc., (Buckeye), and American Municipal Power, Inc. (AMP) submitted timely motions to intervene.

16. On March 16, 2020, Ohio Commission filed a protest. On March 24, 2020, Ohio Consumers' Counsel, AMP, and Buckeye filed protests. On April 3, 2020, Dayton filed an answer. On April 20, 2020, AMP filed an answer to Dayton's answer.

A. Protests

17. AMP, Buckeye, Ohio Consumers' Counsel, and Ohio Commission (collectively, Protesters) argue that Dayton's formula rate should be set for hearing and settlement procedures. In particular, Protesters focus on Dayton's proposed 10.39% ROE and 50 basis point RTO Participation Adder, which they argue produces a substantially excessive ROE that is not just and reasonable.²⁰

18. Ohio Consumers' Counsel and AMP further submit that a full five-month suspension of the Dayton Formula Rate and Protocols is warranted under *West Texas Utilities*. AMP argues that this conclusion is supported by the fact that a reduction of only 55 basis points in the requested ROE would produce a reduction in the revenue requirement of \$617,662, which it states is approximately equal to 10% of the rate increase that would result from Dayton's filing. AMP argues that, since a base ROE of 9.84% is generally in line with other recent ROE awards and settlements, a reduction to Dayton's ROE of at least that amount is easily supported. Accordingly, under *West Texas Utilities*, AMP argues the filing should be suspended for five months.²¹

19. Ohio Consumers' Counsel argues that Dayton's proposed ROE is excessive and not consistent with Commission precedent. Ohio Consumers' Counsel argues that using the average of the discounted cash flow and the capital asset pricing model Commission-approved approaches produces an ROE range of reasonableness of 8.75% to 9.89%, yet even the upper end of this range is 50 basis points below the 10.39% ROE requested by Dayton. Ohio Consumers' Counsel argues that this 50 basis point difference applied against Dayton's proposed net rate base of \$180,804,592 accounts for rates that are excessive by over \$904,000.

20. Regarding Dayton's long-term debt component, AMP argues that Dayton should be directed to modify its formula rate to base the amount of the long-term debt component in the capital structure on the total amount of each debt issuance rather than on the net proceeds of each issuance. AMP takes issue with Dayton's proposed

²⁰ AMP Protest at 2-6; Buckeye Protest at 6; Ohio Consumers' Counsel Protest at 6-12; Ohio Commission Protest at 5-6.

²¹ AMP Protest at 6.

investment base, including: treatment of unfunded reserves; undistributed stores expense (materials & supplies); electric plant held for future use; cash working capital; exclusion of asset retirement costs; and unrealized gains and losses on pensions.²² AMP also protests Dayton's proposed tax expenses treatment in its Formula Rate, including its proposed accumulated deferred income taxes (ADIT) amortization and ADIT proration. AMP raises other expense and revenue credit issues, including: customer accounts; services and informational expenses, and sales expenses; Dayton's revenue sharing mechanism; and Dayton's use of a revenue allocator for customer deposits and customer advances. AMP also protests Dayton's proposed depreciation rates, arguing that Dayton should not include asset retirement costs in its depreciation and that Dayton should not tie depreciation rates approved by the Commission to depreciation rates approved by the Public Utilities Commission of Ohio for Dayton's state jurisdictional service. AMP also argues that the true-up attachments to the Dayton Formula Rate do not calculate interest properly.²³

21. AMP states that it assumes Dayton's inclusion of the RTO Participation Adder in the total ROE claimed here is subject to the outcome of Docket No. ER20-1068-000 and that for clarity, the Commission should so state in any action it takes in the instant proceeding.²⁴

22. Buckeye argues that a close examination should be performed of the basis for and accuracy of Dayton's proposed rate base adjustments. Buckeye argues that a better understanding is needed regarding Dayton's adjustments for ADIT and excess ADIT, CWIP, regulatory assets and liabilities, and unfunded reserves. Buckeye also raises various issues with Dayton's 2020 projected transmission revenue requirement regarding Dayton's operations & maintenance expenses, administrative and general (A&G) expenses, and the inclusion of customer service and sales expense to transmission.²⁵

23. Ohio Consumers' Counsel argues that: (1) Dayton has not demonstrated its capital structure and long-term debt costs are just and reasonable; (2) the proposed treatment of unfunded reserves in the Formula Rate may be unjust and unreasonable because Dayton fails to include a number of unfunded reserve accruals; (3) the Formula Rate should be clarified to affirm that customers can challenge potential over-allocation of certain prepaid expenses in to transmission rates charged to consumers; (4) Dayton's treatment of ADIT and excess ADIT and whether it comports with Commission precedent;

²² *Id.* at 6-14.

²³ *Id.* at 22.

²⁴ *Id.* at 3.

²⁵ Buckeye Protest at 7.

(5) Dayton's Formula Rate should be clarified to include a note stating new regulatory assets require Commission approval before inclusion in the Formula Rate; (6) the Formula Rate should be clarified to affirm that customers can challenge the recording of costs to A&G accounts; and (7) the Commission should clarify that the effective date for Dayton's Formula Rate is May 3, 2020.²⁶

24. Ohio Consumers' Counsel protests the inclusion of the 50 basis point RTO Participation Adder, CWIP Incentive, and Abandoned Plant Incentive in the Formula Rate template and incorporates by reference its protest in Docket No. ER20-1068-000. Ohio Consumers' Counsel states that it recognizes that the issue of whether Dayton will be allowed to use these requested incentives will be decided in Docket No. ER20-1068-000, and it requests that the Commission condition the inclusion of these incentives in the Formula Rate template on the outcome in that proceeding.²⁷

25. Ohio Consumers' Counsel argues Dayton has provided no justification for the inclusion of a placeholder for future ROE incentive adders in its Formula Rate at this time, especially where it has not even requested such incentives. Ohio Consumers' Counsel argues that excluding the placeholder now will not disadvantage or prejudice Dayton in any way, and a placeholder is premature at this time.²⁸

26. AMP, Buckeye and Ohio Consumers' Counsel also protest various aspects of Dayton's Protocols. AMP, Buckeye, and Ohio Consumers' Counsel argue that Dayton's proposed Protocols require further examination through hearing and settlement procedures. Ohio Consumers' Counsel argues that the Protocols provide insufficient protection or are insufficiently specific.²⁹ AMP argues that a review of Dayton's proposed Protocols, including a comparison of Dayton's Protocols with protocols currently in effect under the Midcontinent Independent System Operator, Inc. tariff for transmission owners using projected revenue requirements exposes a number of issues that render Dayton's proposed protocols unjust and unreasonable.³⁰

²⁶ Ohio Consumers' Counsel Protest at 35.

²⁷ *Id.* at 12, 39.

²⁸ *Id.* at 29-31.

²⁹ Ohio Consumers' Counsel Protest at 31.

³⁰ AMP Protest at 23-24.

B. Dayton Answer

27. Dayton argues that, while disputes exist about certain components of the Formula Rate, there is no opposition to Dayton implementing a Formula Rate and, thus, no Protesters have proposed rejecting Dayton's filing or requested maintaining a stated rate.³¹ As such, Dayton argues that a one-day suspension, with rates effective subject to refund and subject to the outcome of hearing and settlement procedures, is consistent with Commission precedent in applying the *West Texas Utilities* test to applications to revise a stated transmission rate to a formula transmission rate. Dayton argues that both its proposal and the circumstances in *Tucson Electric* are virtually identical, and the Commission should, therefore, set any issues for hearing after a nominal suspension period of one day.³²

28. Dayton states that it agrees with the Ohio Consumers' Counsel's and AMP's views that the RTO Participation Adder, CWIP Incentive, and Abandoned Plant Incentive are properly before the Commission in Docket No. ER20-1068-000, and the implementation of these incentives within the formula rate is contingent on the outcome of that proceeding. Dayton argues that the one area of overlap that properly remains within this case is that the overall ROE, including any authorized RTO Participation Adder, must remain within the zone of reasonableness.³³

29. Regarding the placeholder for potential ROE incentives in the future, Dayton argues that the Ohio Consumers' Counsel does not identify why customers would be more fully protected by deleting these placeholders. Dayton argues that, from an administrative perspective, retaining the placeholders is more efficient and that any future FPA section 205 filing would be made by Dayton. Dayton argues that the Commission approve this placeholder that would become active only if needed in the future as the result of a future FPA section 205 proceeding.³⁴

C. AMP Answer

30. AMP states that it does not attempt to address every contention or claim set forth in Dayton's answer with which AMP disagrees. Rather, AMP states that it is limiting its response to the arguments contained in Dayton's answer that appear central to Dayton's position. AMP argues that Dayton has failed to show that the increase in the revenue

³¹ Dayton Answer at 1-2.

³² *Id.* at 3-4 (citing *Tucson Elec. Power Co.*, 168 FERC ¶ 61,068 (2019)).

³³ *Id.* at 12.

³⁴ *Id.* at 44-45.

requirement that would result from applying the proposed Formula Rate is not substantially excessive. AMP argues that Dayton's proposed 10.39% ROE is not supported in the record and that, even if Dayton reduces its ROE to a lesser extent, it would still be substantially excessive under the Commission's *West Texas Utilities* suspension analysis.³⁵

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Dayton's and AMP's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

33. We will address separately Dayton's request for a 50 basis point RTO Participation Adder, as well as its requests for the CWIP Incentive and Abandoned Plant Incentive, in the proceeding addressing Dayton's application for transmission incentives in Docket No. ER20-1068-000.³⁶

34. We grant Dayton's proposed inclusion of a placeholder in its Formula Rate for additional ROE incentives to accommodate a potential future grant of additional ROE incentives. We remind Dayton that it must first seek Commission approval through an

³⁵ *Id.* at 2-3, 10.

³⁶ As Dayton did not make its Section 219 filing for incentives in Docket No. ER20-1068-000 through the Commission's eTariff portal, the incentives filing does not have a statutory action date under FPA section 205(d). *See* 18 C.F.R. § 35.7(d) (2019) (filings not submitted in accordance with the eTariff filing requirements will not become effective in the absence of Commission action within the statutorily prescribed period).

FPA section 205 filing made through eTariff to include such incentives in its Formula Rate.³⁷

35. Our preliminary analysis indicates that Dayton's Proposed Tariff Revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The filing raises issues of material fact, including, but not limited to, the determinations of base ROE and capital structure, the Formula Rate, and Protocols in their entirety, that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures that we order below. Accordingly, we accept and suspend for a nominal period the Proposed Tariff Revisions,³⁸ effective May 3, 2020, as requested, subject to refund, and set them for hearing and settlement judge procedures.

36. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁴⁰ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to

³⁷ The eTariff filing must be made using Filing Type code 10.

³⁸ In *West Texas Utilities*, the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas Utilities*, the Commission will generally impose a five-month suspension. *West Texas Utilities*, 18 FERC at 61,374-75. In the instant proceeding, our preliminary analysis indicates that the proposed rates may not be substantially excessive, as defined in *West Texas Utilities*, and therefore we deny Protesters' request for the maximum suspension period.

³⁹ 18 C.F.R. § 385.603 (2019).

⁴⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience <http://www.ferc.gov/legal/adr/avail-judge.asp>.

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Dayton's Proposed Tariff Revisions are hereby accepted for filing and suspended for a nominal period to become effective May 3, 2020, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Dayton's Proposed Tariff Revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(D) Within 60 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 45 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions

(except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.